

# A Guide to Home Ownership For People with Limited Income in South Dakota

2007





## **Table of Contents**

Home Ownership Is Possible	1
Introduction and Acknowledgements	2
Home Ownership: What is it and how does it work?	3
Where to Begin	5
The Cost of Homeownership	10
Forms & Types of Ownership	11
Types of Homes & Homeownership	12
Trusts	13
Guardianship/Conservatorship	15
Fair Housing – It's Your Right	16
Resources	17
Frequently Asked Questions	21

This manual can be downloaded from several websites – including the SD Council on Developmental Disabilities' website at <http://dhs.sd.gov>

OR to request printed copies – contact the Council at 605-773-6369 or via email at [infoDDC@state.sd.us](mailto:infoDDC@state.sd.us)



## HOMEOWNERSHIP IS POSSIBLE...



Judy is an active young woman who works nearly full time, enjoys yard work, and just bought her first home. Judy also happens to have a disability and each year she loves to take part in many of the events at the Special Olympics.

Having lived with her parents all her life, Judy took a major step toward independence and moved into an apartment with a roommate.

It didn't take her long to realize that renting was okay, but owning her own home would be much better. So she and her parents began exploring the idea of Judy buying her own home. They started with a search of the Internet where they found the Department of Housing and Urban Development (HUD) website. They checked out a few HUD-owned houses and decided to visit the local HUD Office. There Judy got information on housing counseling agencies, down payment assistance programs, first-time homebuyer programs, and other great home buying information.

Equipped with this new knowledge, she and her parents visited a Housing Counseling Agency that offers one-on-one counseling to prospective homebuyers. Staff evaluated Judy's income and debt and provided her with a sensible price range of a home for which she could qualify.

Judy and her parents selected a lender they knew who was familiar with people with limited income and disabilities and willing to work with them in getting the best deal. They applied for a loan and for the down payment program during the initial visit. Both applications were approved.

Judy involved a real estate professional to help find the home she wanted. She provided the realtor with a list of what she was looking for in a home, the price range and desired location. After looking at several homes, Judy found one that she loved. She closed on the loan 60 days later and now enjoys the comforts of her own home.

### FINANCIAL INFORMATION:

Judy's gross income was \$800-850 per month.

Asking price was \$74,500; Purchase Price was \$68,500.

Monthly house payment \$480 (includes principal, interest, taxes and insurance).

First-time Homebuyer Program – 30 year fixed loan at 4.95%

Down payment and Closing Cost Assistance from the local government program - \$8,000 total – 25% is forgiven after 5 years of occupancy and the remainder is paid back (with no interest) when Judy sells the home.

Her only out-of-pocket expense was \$500 paid to the seller when they signed the sales agreement as a good faith payment that was credited to her at closing.

# INTRODUCTION

In 1995 the South Dakota Council on Developmental Disabilities sponsored a project that developed a resource guide called, **A Financing Guide to Consumer Ownership**. This guide was written to assist agencies working with people with developmental disabilities to identify funding sources available in the State of South Dakota for home ownership.

Beginning in April 2004, a workgroup met to discuss home ownership and set action steps to promote home ownership for people with disabilities.

Goal 1 was to assist individuals with disabilities to become home owners.

Goal 2 was to develop information related to home ownership for people with low and very low incomes (including people with disabilities).

Goal 3 was to broadly share this information across South Dakota.

This book is intended to provide information on home ownership for people with disabilities and their families, service providers, advocates, etc. You will notice that throughout the book that reference is made to the “potential home owner” and not as “the person with a disability”. Any person with low or very low income can benefit from the material covered in this book. This book is designed to bring to the reader an awareness of programs and where to acquire additional information and assistance.

There are many resources available throughout South Dakota that would enhance home ownership opportunities. Unfortunately, this guide can not begin to identify all the resources that may exist and those resources are constantly changing. It is hoped that it will spark interest in pursuing resources for home ownership.

The South Dakota Council on Developmental Disabilities would like to thank all those who provided information and assistance in the development of this manual.

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# HOME OWNERSHIP:

## What is it and how does it work?

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### What is Home Ownership?

When we speak of home ownership what we are really discussing is the desire of a person to own their home. In its simplest form, home ownership is about *empowering* people with the opportunity to acquire and control their own affordable housing within the community. Title to property, with the exception of trusts and cooperatives, is in the person's name. As people and their families begin to understand the availability of funding streams for home ownership, then they realize that home ownership is possible.

Home ownership is not just about people buying their own home and holding title, it's also about giving people *choices* as to where they would like to live, the type of house and amenities they want in a home, and whether they want or need to share their home with others. Bob Laux, Creative Management Associates, in his article entitled ***Your Place or Mine?***, describes the importance of home and choices.

"Home. A place to hang your hat, call your castle or find your heart. To me, home brings up thoughts of crackling fires, backyard chats over the fence, weekend projects, friends, neighbors, celebrations, Michelob, family, barbecues and a place of solitude. To our homes we sometimes invite others and sometimes choose to be by ourselves. The choice is ours. That's what home is all about.

For many people with developmental disabilities, home represents something decidedly different. Those remanded to group homes may face bans on fireplaces, fences that hinder contact, weekends filled with shift staff, "paid friends", indifferent or even hostile neighbors, few things to celebrate, no "adult" beverages, absent families, staff who cook and a world filled with 24 hours of "active treatment". Our lifestyles and homes bear little resemblance to theirs."<sup>1</sup>

Isn't this what home ownership is all about: **a place called home?** For everyone, home ownership is an option that deserves attention and effort. Many persons need assistance in the home buying process as well as counseling on the responsibilities and obligations of home ownership. They must be provided assistance so they can make informed decisions and create their place called home.

*Who can assist people to buy a home?* The answer is quite simple – anyone who the person knows and trusts - including family members, relatives, guardians, case managers, friends, service providers, advocates, program coordinators, or other

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<sup>1</sup> Bob Laux, "Your Place or Mine?", **Impact**, (Volume 3(1) Spring, 1990), the Research and Training Center on Community Living and the Institute on Community Integration at the University of Minnesota.

community acquaintances. Anyone providing assistance should make the necessary commitment to home ownership for the potential home owner and their success. Regardless of who provides assistance, the potential homeowner must be actively involved and informed throughout the home buying process since they will be signing all contracts, i.e., purchase and sales agreements, loan applications, mortgages, etc.

Home ownership is about personal choices, making informed decisions, and the development of affordable housing that is owned by the person.

If we ask people why they want to own their own home, their responses may be surprising. Some persons will tell us “it’s none of your business” or simply “just because”. Others will talk of the stability that home ownership represents. Some will talk about their desire to control who visits them and when. Still others will talk about home and childhood with their parents and brothers and sisters as if owning their own home will bring that back. Regardless of the reasons why people want to own their home, they should be given every opportunity to achieve the *American Dream*.

Home ownership results in a transfer of control over one’s living environment to the person. Home ownership entitles the person to certain legal rights. As homeowners, persons have the right to use and occupy their house without the permission of anyone else. They are free to decide whether they can hang pictures on the wall or paint their room in their favorite color. They can even have a dog or cat and they don’t need to ask anyone for permission. Because their home is their castle, they can decide who visits when and for how long. There can be overnight guests, friends over for dinner or barbecues, getting a fire going in the fireplace or enjoying the solitude home offers.

For everyone, there is a natural progression from living at home or in a group setting to renting and living alone or with one or two roommates and then the move to home ownership.

For information about the home ownership process specific to South Dakota, contact the Housing & Urban Development Office in Sioux Falls, SD Housing Development Authority in Pierre or SD Advocacy Services. Contact information can be found in the Resource Section of this Guide.

### **Summary**

People need to know that there are funding programs available to assist people to buy a home. Once someone understands the funding streams and how they work, they will realize that home ownership is very possible.



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# WHERE TO BEGIN?

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Homeownership is complex and involves many steps. Each step builds on the previous step so it is important to remain focused and complete each step before moving to the next. The steps to homeownership are:

1. Personal Desire
2. Homeownership Education & Counseling
3. Review Personal Finances
4. Obtain Pre-approval for a Loan
5. Home Selection
6. Completion of Purchase

If one looks at homeownership in the context of these steps, then it is not as difficult as might be imagined. The most effective and successful plans are those that are thorough and simple.

It must be understood that homeownership is not for everyone. This information is provided not to force homeownership onto someone who has no interest in owning a home but to assist someone who does.

Although a person can purchase a home by themselves, a team approach is recommended. The team could consist of the potential homeowner, spouse, the lender and a real estate professional. In many cases it is important to include family members and a person's service coordinator or other support staff (if the person is receiving services). An attorney or financial advisor may need to be added to the team or consulted as well.

## 1. Personal Desire

There are five (5) criteria that can be applied to determine a person's interest in home ownership.

First, a person must express the **desire** to own their home. Talking about what it means to own one's home is a good place to start. Everyone needs *a place to call home* and it is quickly learned from a person that they have certain needs that their current living arrangement does not satisfy. These unmet needs are generally the reasons why a person wants to own their home.

Second, a person must be of **legal age and have the ability to enter into a contract**. The significance of this requirement is in one's ability to enter into a binding contract. One of the essential elements of a contract is that all parties to the contract must be legally competent. Home buyers will be signing Purchase Contracts and mortgage notes to finance their purchase. If someone who is not of legal age and competency enters into a contract, the contract is voidable. A voidable contract is one that can be challenged or found no longer valid by either party. Guardianship is discussed in a later section of this Manual.

A Real Estate Professional will not spend the time searching for a house with a person knowing that they are not of legal age or competency. Real Estate Professionals are governed by the *law of agency* of the state in which they do business. This means they have a responsibility to the Seller based on trust and confidence to find an able and willing buyer. A Real Estate Professional does not want to submit to the Seller a Purchase Contract that is voidable (or invalid).

By the same token, a Lender or loan officer is not going to submit a loan request for approval if the borrower is not of legal age and competency. They have a responsibility to uphold sound lending practices. In fact, as soon as lenders become aware of the fact that a person is not of legal age or competency, they will refuse to proceed further. It is important to understand that if the information is not volunteered, lenders will ask whether the person can legally enter into a contract.

*Does this mean that someone who is not of legal age or competency cannot buy a home?* Absolutely not! A person would need to have a co-signer on the mortgage. The co-signer can be a guardian, family member, friend, or non-profit housing development corporation. Anyone interested in homeownership should be aware of legal competency and/or guardianship issues. Be sure to consult with a knowledgeable attorney. Lenders will want to know who will co-sign and details of the co-signer's personal finances. Make sure to discuss personal finances of both parties when contact is made with any lender.

Third, persons must be willing to participate in a **homeownership education and counseling program**. People should find a program that is informative, non-judgmental, and provides a focus on responsibilities, obligations, and cost of homeownership. An affordable housing program may require the borrower to participate in a homeownership education and counseling program as a condition of loan approval. Lenders want assurances that the prospective homebuyers understand the responsibilities and obligations associated with homeownership.

Fourth, all persons **must meet the underwriting criteria** used by financial institutions to determine a person's eligibility to borrow money. Although state and federal dollars may be needed to make homeownership affordable, bank financing is an important component.

*What is meant by underwriting criteria?* Lenders have several ratios that they use to determine if a borrower has enough income to pay back the money they borrow. Before talking to any lender, it is necessary to determine how much money the person can afford to borrow and pay back. Then, the qualifying ratios can be applied to the person's income and expenses to prove that the person meets the lender's underwriting requirements.

Fifth, the person should be **currently living in a stable living arrangement**. If they have a stable living arrangement, they are more likely to be capable of entering into purchase contracts and assuming the mortgage obligations of a home.

Finally, if we apply these five (5) criteria to a person looking towards homeownership, the chance of successful homeownership is greater. Money was

not discussed in these criteria. Money, or a lack of money, *should never* be considered as criteria for homeownership. The most important thing is a **DESIRE** to own a home.

## **2. Homeownership Education and Counseling**

Homeownership education and counseling programs exist across South Dakota. Programs will be able to help a person understand the real estate, banking and legal terms associated with homeownership and relate this information to the person's experiences.

Homeownership education and counseling programs are intended to create an awareness of the issues and enable a person to make informed decisions about homeownership, the responsibilities of owning a home, and the need for "house mates". A person may decide after participating in the homeownership education and counseling program that homeownership is not for them. *Does this mean that homeownership is a failure?* Absolutely not! There is nothing wrong with persons losing interest or the desire to own a home. It is better to find out this information before a house is purchased than after and that's the primary objective of homeownership education and counseling.

To learn what programs are available in your area, contact the South Dakota Housing Development Authority ([www.sdhda.org](http://www.sdhda.org)) or the Homeownership Education Resource Organization (HERO) Program ([www.sdhhomebuyer.org](http://www.sdhhomebuyer.org)). See the Resource List for more contact information.

## **3. Review Personal Finances**

The purpose of reviewing personal finances is two-fold. First, a person needs to know the amount and sources of income, current monthly expenses, available cash assets, all monthly debts and obligations, and financial support available from parents, relatives and friends. This information will help when structuring the financing requirements and terms. Second, this information will be needed when speaking to lenders about applying for a mortgage. Lenders appreciate when a person can present specific information about income, assets and expenses.

An important aspect of a person's finances is their credit rating. A person's credit history needs to be as clean as possible. Before you start house hunting, get copies of your credit report. AnnualCreditReport.com is the official site to help consumers to obtain their free credit report ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)). This central site allows you to request a free credit file disclosure, commonly called a credit report, once every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion. Make sure the facts are correct. It is important to fix any problems you discover on the report.

For a person with limited or no credit history, many lenders will consider a person's history of payments for cable television, telephone service or utility bills. For a person who has a representative payee, the payee should be included in all phases of discussion regarding personal finances and home ownership.

Homeownership education and counseling programs will assist in the review of personal finances. After completing the review of personal finances, if the person remains interested in owning a home, continue on to the next step.

#### **4. Obtain Pre-approval for a Loan**

The next step is to structure the financing. When most people buy a house, the first step is pre-approval or pre-qualifying for a mortgage loan so a person knows how much they can afford before the house hunting begins. Ask family, friends and co-workers for a referral to a lender. Armed with a price range in mind they select a house that matches their budget. Persons with limited income don't fit the conventional mold of a homebuyer and those assisting the homebuyer may need to be creative and unconventional in their approach to financing in order to make homeownership work.

#### **5. House Selection**

The fifth step in home ownership is the actual selection of a house. Homeownership Education and Counseling Programs will also cover this topic with the potential homebuyer.

*Should a person look at every house on the market before they make a choice?*

Definitely not! The first thing to do is to determine what the average priced house is in the community where the person wants to live. Then, based on discussions with the person about what they want or need in a house, the number of houses to look at should be fewer. By sharing this information with a Real Estate Professional, they can use this information to assist in finding houses that match the person's needs and desires. Some of the conveniences or amenities that should be considered include:

- ◇ *Where does the person want to live?* What side of town? Near parents or relatives? Near work, recreational facilities, bus lines, church, friends, shopping malls? Does the person want to live in a rural vs. urban area? What in their lives is important to them and will the location of their home complement those things that are important?
- ◇ *Does the person need to live near public transportation?* If the person has access to private transportation, access to public transportation is not a factor in determining where a person lives. However, if the person needs a ride to work, or to use recreational facilities in another part of the city, or to visit family and friends, access to public transportation is crucial in determining location of his or her home.
- ◇ *What does the person want and need in a home?* Does the person want to live in a house, condo, townhouse, mobile home, etc? What style of house does the person want (ranch, cape, gambrel, etc.)? Does the person require that the living space be on one floor? How many bedrooms do they want? How many bathrooms do they want or need? Do they want a house with a family room? den? garage? yard? air conditioning? fireplace?

Does the house need to be wheelchair accessible (If the answer is “yes” and an accessible house can’t be found, you can always adapt a house to accommodate the person)? Is it advantageous not to have neighbors living in close proximity to the home?

Next arrange to view each house. By taking notes, pictures or video a person is able to take their time to review and compare the homes they have visited. A Real Estate Professional can provide information on the houses, i.e., property taxes, insurance costs, water and sewer charges, heating costs, electricity bills, rubbish removal, etc.

Besides purchasing a home that is already built and for sale, other options might include purchasing a custom-built or ready-made home such as a Governor’s Home from SD Housing Development Authority or working with a contractor to design and build a home. These options take more time and attention to details but should not be ruled out as an option for homeownership.

A potential home buyer should also learn about programs that are available to assist in the remodeling or renovation of existing housing. Some of these resources are included in the Resource Section.

Home Modifications & Repairs - If you are a person with a disability, whether you rent or own, there are resources for remodeling. Check with your local Independent Living Center, Community Action Agency or the US Department of Agriculture Rural Development Office. If you rent, your landlord may be required to make or allow you to make modifications. Many of the agencies and organizations listed in the Resources Section also have information on home remodeling and repairs.

## **6. Completion of Purchase**

Once a home has been found that meets the needs and wants of the homebuyer, the Real Estate Professional can assist in completing a Purchase Agreement that commits the homebuyer to a specific price and specific terms. The homebuyer may want to obtain a professional home inspection to determine the physical condition of the house and its various systems. Purchasing homeowner’s insurance will also be required before closing on the loan. This is the final step in purchasing a home. Documents are signed, closing costs are paid, and title is transferred from the seller to the buyer.

### **Summary**

To many, the idea of homeownership is complex and overwhelming. But, if a person remains focused on the six steps to homeownership as presented in this chapter, they will find that homeownership will not be as difficult as expected. Never lose sight of the fact that homeownership is occurring all over the country and for many people with limited incomes, homeownership is a reality!

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# THE COST OF HOME OWNERSHIP

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*What does it cost to own my own home?* This is one of the most frequently asked questions about homeownership. Unfortunately, there is no easy response to this question except to discuss the various costs one might incur when buying a home. The cost of a home purchase can easily be broken down into two categories: Upfront Costs and Ongoing Costs.

Understanding what it costs to purchase a home is essential to homeownership. Homeownership education and counseling programs and your Real Estate Professional should help persons interested in buying a home to figure the upfront costs of buying a home such as the down payment and closing costs and the ongoing costs of homeownership such as monthly mortgage payments, taxes, insurance, electricity, heating, trash pickup, water and sewer, maintenance and repairs, lawn and snow removal, and capital reserves. A person's monthly income must be sufficient to cover these expenses.

Many organizations and agencies provide worksheets and materials to assist a person in gathering and reviewing this information in preparation for home ownership. Some of those resources are the HERO Programs ([www.sdhomebuyer.org](http://www.sdhomebuyer.org)), utility companies and county offices.

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# FORMS OF HOMEOWNERSHIP

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Any discussion of home ownership must include information about *how ownership is held* since the objective is to have the person hold title in their name. Whenever real estate transfers from one owner to another, title passes to the new owner at closing as evidence of their right of ownership. Understanding the issues associated with *how ownership is held* is important. People need to make choices about how they will hold title to property before they actually take possession.

The form of ownership is even more important to those people who are receiving federal benefits such as SSI (Social Security Income) as these programs have income and asset limits that must be followed. People need to make informed choices about the forms of ownership and the advantages and disadvantages of each ownership option. Many people will need to consult with an attorney who will determine that their choice conforms to the laws of South Dakota. Ask friends and family for referrals to a knowledgeable attorney (particularly if a trust is involved).

## **Sole Ownership**

In this type of ownership, one person owns the home. Loan qualification and approval will be based entirely on your income and credit record. The mortgage will be in your name alone. If you, as a single person, have a will at the time of your death, the property will be distributed by Probate Court as stated in your will. If you do not have a will, the property will be distributed to your heirs as determined by South Dakota law.

When two or more people wish to buy real estate together, they should carefully consider the way in which they wish to hold title to that real estate. The two most common forms of multiple ownership of real estate are:

## **Joint Tenancy and Tenancy-In-Common**

The joint tenancy form of ownership includes the right of survivorship. This means that, upon the death of one co-owner, the surviving co-owner automatically acquires all of the interest which the deceased had in the property.

On the other hand, the tenancy-in-common form of ownership does not include the right of survivorship. Upon death of one co-owner, the deceased's interest passes to their heirs.

Most married couples use joint tenancy in order to have the automatic right of survivorship, but there are situations in which married couples use tenancy-in-common. In addition, sometimes unmarried people buying real estate together choose a joint tenancy. If you are unsure about which is the best form of ownership for you, you should seek legal advice.

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# TYPES OF HOMES & HOMEOWNERSHIP

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## TYPES OF HOMES

1. Single Family Attached or Townhouse – A one-family dwelling connected to 2 or more dwellings by common walls or floors.
2. Single-Family Detached – A one-family dwelling located on a lot, or if in rural areas located on acreage.
3. Duplex – A dwelling that contains two housing units with common walls and floors and may be side by side or multi-level. Generally owned by one person.
4. Twin Homes – Similar to a duplex but each unit is owned by separate individuals or families.
5. Triplex – A Dwelling that contains three housing units with common walls and floors and may be side by side or multi-level.
6. Fourplex (Quadruplex) – A dwelling that contains four housing units with common walls and floors and may be side by side or multi-level.
7. Garden Apartment (Stacked Flat) – A multi-family structure, with one to four levels, with common entrances, hallways and stairways.
8. Multi-Family – A structure with four or more units with common entrances, hallways, and stairways. Typical structures include mid-rise and high-rise buildings.

## TYPES OF HOME OWNERSHIP

1. Fee Simple – A form of ownership in which the homeowner holds title to the land and all its improvements.
2. Condominium – A form of ownership in which the homeowner holds title to an individual dwelling unit and an interest in the common elements, which are owned jointly with other condominium dwelling unit owners. Included in the loan payment are Association Fees. These fees vary from \$90 to \$150 per month. Association Fees typically cover the costs of building/ground maintenance, lawn care and snow removal. The Association has a board that makes pertinent property decisions. The owner has the opportunity to participate in Association Board meetings as a voting member.
3. Cooperatives – A form of ownership in which a corporation owns a multi-unit residential building and leases the residential units to individuals who own stock in the corporation. The units are not individually owned.



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# TRUSTS

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Trusts are a tool that may be beneficial when considering home ownership for persons who are receiving entitlements such as SSI and Medicaid. The use of trust wills requires a case by case analysis by the appropriate state and federal agencies as well as your legal and financial planning team.

In the United States legal system, an arrangement can be created that allows for money and/or property to be transferred and owned, managed and dedicated to a specific use and benefit. Most commonly, the arrangement is called a trust. A trust is a recognized entity that receives the money and/or property (called the trust property or corpus). A trust is usually created by a written trust documents that sets out the intentions of the person or organization (variously called settlor, donor, grantor, creator) whose property is placed into trust. The document also states for whom the trust is created (called the beneficiary); what the trust property includes; the terms and conditions of how the property is to be managed; and who will be carrying out the mandatory terms and conditions of the trust (called the trustee). A trustee can be a person, persons or an organization. A trust imposes legal obligations.

A trust may be created for any purpose that is not illegal. The creation, interpretation and management of trusts in South Dakota are subject to state law. Relevant laws can be found in the SD Codified Laws at Title 55 – Trusts and Fiduciaries. Trusts are either inter-vivos or testamentary. Inter-vivos means created while the donor is alive. Testamentary means the trust comes into effect after the donor dies. This type of trust is usually created through a will. Families often look to trusts to assist them in planning for members who have a disability.

Trusts present a particular challenge for persons who are receiving entitlements. Because trust resources are usually considered to belong to the beneficiary, having an interest in a trust that is readily available will affect a person's eligibility for entitlements that have resource limitations. The Medicaid program has a \$2,000 resource limitation for eligibility. Two specific types of trusts in South Dakota recognize the unique needs of persons with disabilities and address the "availability" problem.

These two trusts, if done correctly, allow a person with a disability and receiving entitlements to have an interest or resource in the trust in excess of an entitlement program's dollar resource limits and still participate in the SSI and Medicaid programs. The two trusts that are recognized by state agencies in South Dakota have specific names – the Hamilton Trust and the Irrevocable Trust for Disabled Individuals Under Age 65. These trusts are not used interchangeably. Each has a specific purpose that will dictate its use for the benefit of a person with a disability. Which trust to use will depend on whether the beneficiary owned the resource at the time it was placed into the trust. It is important to remember that each trust has

specific criteria and requires exact language to set out particular terms to be effective.

While historically the Hamilton and Irrevocable Trust for Disabled Individuals Under Age 65 trusts are used to receive money resources to be managed for the benefit of a person with a disability, they may also be considered to receive real property including and house and resources to purchase and/or maintain a home. Creating home ownership within or transferring home ownership equity into a trust to assist a person with a disability is extremely complex. Applicable state and federal rules and regulations must be reviewed on a case by case basis to avoid an adverse consequence and loss of benefits. Most importantly, the review must be done before the home ownership event takes place and should be done in consultation with appropriate state and federal agencies and with the advice of relevant professionals including attorneys, financial planners and insurance and tax consultants.

Some possible home ownership events are described below and are given only as examples. It is VERY IMPORTANT to utilize the correct timing and trust documents to make home ownership work for the person without losing entitlement services.

1. Parents own a home they wish to give to their adult child. The adult child would need to pay fair market value rent. The parents then wish to give or sell the house to the adult child. Parents and the adult child would enter into a Bill of Sale and transfer the deed/title of the house to the adult child. The gift or sale would not count as a resource because the adult child is occupying the property.
2. Parents and an adult child wish to own a home together. (Co-own) The adult child will occupy the home. The parents make a substantial down payment or pay for the property. The adult child will need to pay utilities and a pro-rata amount of taxes as well as sharing in the overall expenses of the property.

These are some scenarios to transfer equity of property and ownership to persons who are currently on SSI. Equity in a home is generally an excluded resource as long as the person or persons are occupying the property.

#### Summary

The area of trusts is one that is complex and at the same time very important in the planning for home ownership. An attorney or financial advisor knowledgeable in the areas of trusts should be consulted throughout the homeownership process.

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# GUARDIANSHIP / CONSERVATOR

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Guardianship is a legal relationship that gives an individual or agency (the guardian) decision-making authority and responsibility for some or all of the personal affairs of another person. A person for whom a guardian has been appointed has been determined to be unable to make needed decisions about various personal affairs of their life without the assistance or protection of a guardian. These decisions can involve issues relating to the person's health, care, safety, habilitation, therapeutic needs, financial affairs, and others areas of their life.

Guardianship gives the guardian decision-making authority and responsibility over only those selected areas that the person has been determined unable to manage by themselves; for example, a limited guardianship may only apply to health care decisions. The court may appoint a temporary guardianship for a person for a 90-day period if it is felt that such an appointment is in the person's best interest. Finally, the court may appoint joint guardianship, which is more than one person acting as a person's guardian at the same time and sharing in the decision-making authority and responsibilities that accompany guardianship.

Conservatorship is equivalent to guardianship in that it is a legal relationship between a person and one or more individuals appointed by the court to make finance-related decisions on behalf of the person. While a guardianship encompasses personal affairs of a person, a conservatorship is limited to the management of the property and financial affairs of a person. As with guardianship, a conservatorship may be full, limited, temporary, or joint.

A guardian/conservator must maintain contact with the person to become familiar with the person's needs and limitations, respect the fact that their relationship with the person is a confidential one, and should encourage the person's participation in decision-making to the greatest extent possible. Obviously, the guardian/conservator must always act in the best interest of the person, and never become involved in a situation that might give the appearance of a conflict of interest. Finally, the court does require that the guardian/conservator provide some information to the court, including information pertaining to the person's finances and personal inventory, and an annual personal status report.

Refer to the Frequently Asked Questions on pages 21-22 for additional information.

## **Summary**

A person retains all rights not granted to the guardian/conservator by the court. For example, the guardian/conservator does not have the right to change a person's state of residence, marital status, parental rights, or power of attorney without the court's specific authorization. If a person is interested in homeownership and has a guardian or conservator, the guardian/conservator should be included as a member of the team throughout the home buying process.

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# FAIR HOUSING – It's Your Right

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**It is against the law** for someone to do any of the following things based on your race, color, national origin, religion, sex, family status, or disability.

- Refuse to rent to you or sell you housing.
- Tell you housing is unavailable when in fact it is available.
- Show you apartments or homes only in certain neighborhoods.
- Set different terms, conditions, or privileges for sale or rental of a dwelling.
- Provide different housing services or facilities.
- Advertise housing to preferred groups of people only.
- Deny you property insurance.
- Refuse to make certain modifications or accommodations for persons with a mental or physical disability, including persons with HIV/AIDS-related illnesses, and persons recovering from alcohol and substance abuse.
- Harass, coerce, intimidate, or interfere with anyone exercising or assisting someone else with his/her fair housing rights.

If you have experienced a problem in this area which you believe is based on your race, color, national origin, religion, sex, family status, or disability, you can contact one of the following agencies to ask for help or file a complaint.

1. U.S. Department of Housing and Urban Development  
2400 West 49<sup>th</sup> Street, Suite I-201 (605) 330-4223  
Sioux Falls, SD 57105  
  
Fair Housing Hub (303) 672-5437  
U.S. Department of Housing and Urban Development 1-800-877-7353  
633 17th Street, 13th Floor TTY (303) 672-5248  
Denver, Colorado 80202-3690  
  
Fair Housing of the Dakotas (701) 221-2530  
533 Airport Road 1-888-265-0907  
Bismarck, ND 58504

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# RESOURCES

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The Resources that follow focus on financing programs and educational and informational programs that may be of interest. We hope people will take advantage of these programs and pursue those programs that help make homeownership a reality.

AGENCY / ORGANIZATION	WEBSITE	PHONE NUMBER
<b>US Dept of Housing &amp; Urban Development (HUD)</b> HUD is a major source of funding committed to creating affordable housing. Loans are made directly by local banks and not through HUD. The HUD website offers a wide range of information, publications and forms that may be helpful when considering homeownership.  In South Dakota, the Director's Office is your first point of contact at HUD. If you have general questions about HUD or its programs, please call or email at SD_Webmanager@hud.gov.	<a href="http://www.hud.gov">www.hud.gov</a>  <a href="http://www.hud.gov/southdakota">www.hud.gov/southdakota</a>	(605) 330-4223
<b>US Dept of Agriculture Rural Development</b> Rural Development provides funding through either direct or guaranteed loans.	<a href="http://www.rurdev.usda.gov/">http://www.rurdev.usda.gov/</a>	
<b>SD Housing Development Authority</b> The SD Housing Development Authority (SDHDA) has traditionally been involved in developing both single-family and multifamily mortgage loans; HUD housing programs, and housing tax credits. Programs may include first-time	<a href="http://www.sdhda.org/">http://www.sdhda.org/</a>	605-773-3181

AGENCY / ORGANIZATION	WEBSITE	PHONE NUMBER
homebuyers, mortgage assistance, home improvement, Governor's Housing,		
<b>Social Security Administration</b> Huron Office – Room 105 of the Federal Building, 200 4 <sup>th</sup> Street, Huron, SD 57350	<a href="http://www.ssa.gov/">http://www.ssa.gov/</a>	Local # - 1-800-568-1952 Toll-Free 1-800-772-1213
<b>US Dept of Veterans Administration (VA)</b> The US Department of Veterans Administration offers a variety of programs and resources for veterans.	<a href="http://www.va.gov/">http://www.va.gov/</a>	1-800-827-0611
<b>City of Sioux Falls Community Development</b> Sioux Falls	<a href="http://www.siouxfalls.org/comdev">www.siouxfalls.org/comdev</a>	605-367-7125
<b>Homes are Possible Inc. (HAPI)</b> - Aberdeen	<a href="http://www.homesarepossible.org">www.homesarepossible.org</a>	605-226-3217
<b>The Teton Coalition</b> - Rapid City		605-341-9939
<b>Neighborhood Housing Services of the Black Hills</b>	<a href="http://www.nhsblackhills.org">www.nhsblackhills.org</a>	605-578-1401
<b>Northeast SD Community Action Programs (NESDCAP)</b>		605-698-7654
<b>South Central SD Council of Governments</b>	<a href="http://www.districtiii.org">www.districtiii.org</a>	800-952-3562
<b>Home Ownership Assistance Program</b> - Watertown	<a href="http://www.hoap.info">www.hoap.info</a>	605-882-5336
<b>Independent Living Centers</b> Independent Living Centers may be able to assist with independent living skills or services as well as being knowledgeable about community resources for remodeling, etc.	<a href="http://dhs.sd.gov/drs/il/il.aspx">http://dhs.sd.gov/drs/il/il.aspx</a>	1-800-265-9684

AGENCY / ORGANIZATION	WEBSITE	PHONE NUMBER
<b>Habitat for Humanity</b> Habitat for Humanity is an international organization dedicated to the development of decent and affordable housing. Local affiliates are responsible for the selection of families and individuals that will purchase the homes built.	<a href="http://www.habitat.org">www.habitat.org</a>	1-800-422-4828
<b>Fair Housing of the Dakotas</b> Fair Housing of the Dakotas is a non-profit organization serving North & South Dakota that works to eliminate housing discrimination and to ensure equal housing opportunities.	<a href="http://www.ndfhc.org/">http://www.ndfhc.org/</a>	1-888-265-0907
<b>South Dakota Advocacy Services</b> SD Advocacy Services provides information and assistance related to protection and advocacy of rights of people with disabilities.	<a href="http://www.sdadvocacy.com/">http://www.sdadvocacy.com/</a>	605-224-8294 or 1-800-658-4782
<b>Center for Disabilities, Sanford School of Medicine, University of South Dakota</b> The Center can provide access to resources thru the Wegner Health Science Center related to Housing and Homeownership for people with disabilities.	<a href="http://www.usd.edu/cd/">http://www.usd.edu/cd/</a>	605-357-1439 or 1-800-658-3080
<b>South Dakota Council on Developmental Disabilities</b> The Council can provide information and referral to other resources related to Housing and Homeownership for people with developmental disabilities.	<a href="http://dhs.sd.gov/ddc">http://dhs.sd.gov/ddc</a>	605-773-6369 or 1-800-265-9684
<b>Community Action Agencies</b> The Community Assistance Program consists of Community	<a href="http://dss.sd.gov/ea/communityassistance/index.asp">http://dss.sd.gov/ea/communityassistance/index.asp</a>	605-773-4678

AGENCY / ORGANIZATION	WEBSITE	PHONE NUMBER
<p>Action Agencies which provide programs and services to low-income South Dakotans. Services vary by agency and may include weatherization, community transportation, food pantries, and emergency services.</p>		
<p><b>Churches &amp; Service Clubs</b> In every community there are churches and service clubs that represent potential funding sources and partners. You need to identify those sources and contact them about how they might be of service. These groups might be able to assist with down payments, rental assistance, and funds for rehab or making a home accessible.</p>		

INCLUDED HERE ARE NATIONAL WEBSITES THAT MIGHT BE HELPFUL. If you do not have internet at home, most public libraries have computers available and can assist a person in locating information.

<b>100 Questions &amp; Answers About Buying a New Home</b>	<a href="http://www.hud.gov/offices/hsg/sfh/buying/buyhm.cfm">www.hud.gov/offices/hsg/sfh/buying/buyhm.cfm</a>
<b>Buying a Home</b>	<a href="http://www.hud.gov/buying/index.cfm">www.hud.gov/buying/index.cfm</a>
<b>HUD: Helping Everyone Live the American Dream</b>	<a href="http://www.hud.gov/initiatives/homeownership/index.cfm">www.hud.gov/initiatives/homeownership/index.cfm</a>
<b>The Access Board</b>	<a href="http://www.access-board.gov">www.access-board.gov</a>
<b>American Association for Retired Persons</b>	<a href="http://www.aarp.org">www.aarp.org</a>
<b>National Resource Center on Supportive Housing and Home Modifications</b>	<a href="http://www.homemods.org">www.homemods.org</a>



## **FREQUENTLY ASKED QUESTIONS REGARDING HOMEOWNERSHIP FOR PEOPLE WITH LOW OR FIXED INCOMES**

1. I live on SSI and my income is under seven hundred dollars (\$700) a month. Can I purchase a home with that amount of income?

The short answer to this question is yes. A person who has little or no debt and who wants to purchase a modest home may be able to do so with this level of income. Before a person makes an agreement to purchase a home they are encouraged to learn more about homeownership. There are homeowner training classes available in many parts of the state to provide a person with more information about all aspects of homeownership. Please consult the South Dakota Housing Guide, for information on Homeowner Education Resource Organization (HERO) service providers.

2. Because I have a limited income how am I going to be able to save enough money for a down payment?

There are various kinds of loans and other programs available to assist with down payments. Some lenders allow a person to finance 100% of the cost of a home. This is the kind of information a person can get by contacting the HERO and attending the classes they offer.

3. If I can afford a home now what happens when my property taxes go up?

There is a state law in South Dakota that will freeze the assessment of single family dwellings. This information can be found in South Dakota Codified Law at SDCL 10-6A. There is an application and eligibility process that one must go through in order to qualify for this freeze. You can contact your County Treasurer for more information.

4. How can I own my home if I am on SSI? Isn't this considered an asset?

For most people who are on SSI their home does not count as an asset when calculating their eligibility for SSI benefits. Someone who is on SSI and wants to explore home ownership should check with the Social Security Administration for rules on this subject.

5. What happens if I want to sell my house to someone else? Will I lose my benefits?

The proceeds from the sale of a home which is excluded from the individual's resources will also be excluded from resources to the extent they are intended to be used and are in, in fact, used to purchase another home, which is similarly excluded, within 3 months of the date of receipt of the proceeds.

6. Can the Pool Trust at South Dakota Guardianship be used as a means of helping people with disabilities to access housing?

The trust can hold a house in trust for someone assuming that there are adequate resources to cover the costs of the taxes, insurance and maintenance. Anyone interested in this type of arrangement should contact an experienced attorney to assist them.

7. Are other types of trusts available to assist people in managing the asset?

A personal trust created for someone with a disability may want to consider a special needs trust. This may be a viable method of assisting a person to become a homeowner. This type of trust will require informed and specialized legal advice from an attorney who understands the unique features of a special needs trust.

8. If I am on SSI why would I want to go to the trouble and expense of purchasing a home?

The Guide Book on Consumer Controlled Housing produced by the ARC of Minnesota and the Research and Training Center on Community Living (UCED) provides ten answers to this question.

1. Permanency
2. Community Inclusion
3. Freedom
4. Respect
5. Responsibility
6. Economic Gain
7. Location
8. Choice
9. Self – determination
10. Independence

9. What do I do to begin the process of buying my own house?

As with all major decisions in a person's life it is best to start with learning about the homeownership process and the development of a plan. A person may start by discussing this goal with a family member, a friend, a service provider or by asking at the library for information about homeownership.